

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION



Hazardous Air Pollutants

Stakeholder comments submitted through September 22, 2005

(Please take one set of comments for your organization.)

>>> Terry Nordbrock <terry@familiesagainstcancer.org> 7/15/2005 9:36 PM >>>
Hi Nancy!

Thank you for inviting me to the HAPS meetings you have held in Phoenix. I appreciate the invitations.

As much as I would like to have attended, I have been unable to get out of previous commitments. I would like to ask you to have stakeholder meetings in Southern Arizona as well as Phoenix. Also, it would maximize citizen turnout if the meetings were held at a convenient time, after work. And since everyone's lives are busy, it would be helpful if there was a schedule posted for meetings over the next few months, so people can plan for them. For instance, I will have to line up babysitting.

I do have two concerns already that I can share:

1. Existing facilities should not be exempted from the rule.
2. The rule should take into consideration localized areas of high concentrations.

If you have any questions, feel free to call me at 520-795-7228.

--

Terry
Mom of Henry and Linus, a 6-year-old Tucson kid with leukemia
Co-founder of FACT, Families Against Cancer & Toxics
<http://familiesagainstcancer.org>

>>> "J. Anderson" <jlander@email.arizona.edu> 7/21/2005 2:20 PM >>>
Dear Ms Wrona and Mr. Owens,

I am very concerned about the beryllium issue in Tucson, yet cannot attend the July 26 meeting. I am strongly against an exemption for existing facilities - a very bad idea for Tucson citizens. Please record my opinion and in the future hold frequent stakeholder meetings in southern Arizona at a convenient time for citizens like myself, a university instructor. The meetings need to be announced well in advance, via email, and a meeting schedule for the next few months should be published.

Thanks very much!
Judith Anderson
2517 E. Helen St.
Tucson, AZ 85716

From: "Lyle Tuttle" <Ltuttle24@earthlink.net>
To: <lemoine.lhamo@azdeq.gov>
Sent: Sunday, August 21, 2005 8:39 AM
Subject: Comments on ADEQ Hazardous Air Pollutants Rule

When you set your *de minimus* levels for HAPs, consideration should be give for the cumulative levels reached when "clustering" is not taken into consideration.

Frankly, to set these levels and then announce to the citizens that you do not take clustering into account when issuing permits does not make sense at all. There is an eight mile long stretch of the Aqua Fria River in the NW Valley that has twenty-three (23) plants, and the majority of them all within a two or three mile area. When permits were issued, we were advised that "clustering is taken into consideration".

Please make clustering a part of your formula to determine the safe levels of pollutants you will allow Arizona citizens to come in contact with.

Thank You

Lyle Tuttle
11662 W Pincushion Ct.
Surprise, AZ 85374

623-583-2354

Ltuttle24@earthlink.net

July 29, 2005

Janet Napolitano
Governor of Arizona
Steve Owens
Director, ADEQ
Todd Mehall
Project Manager, Weston Solutions, Inc.

Subject: ADEQ Hazardous Air Pollutants Rule

Dear Governor Napolitano, Director Owens, and Project Manager Mehall:

The following are comments on the subject proposed Rule based on the 6/29/05 Meeting Summary and 5 other documents; all posted to the ADEQ website.

I thought all contracts were supposed to be written in clear English, not Latin. This whole compilation was very confusing.

I get the impression that you are going to use the EPA HAPs list and identify "de minimis" amounts for chemicals on this list. Whatever that means. You can have a trifle (de minimis) amount of anything. What are you saying here? The objectives are confusing and inconsistent from one document to the next.

Are you trying to say that you are going to establish standards or "not to exceed" limits for these chemicals? At the same time are you going to model emissions from different types or categories of sources?

Then I suppose those numbers would be used to generate emission limits in permits? This is the old approach to things. However, we have monitoring data for PM 10 and PM 2.5 taken near three plant areas that show that emission limits in permits for those pollutants don't mean that exceedences can't happen. The data we have shows that it can and permits using such an approach without requiring real time continuous monitoring are not doing their job of protecting the public health and safety from pollution.

We can only assume that the same deviation from reality will occur with these models and predictions for HAPs chemicals. We believe that without real time monitoring, the public will be put at risk.

How much is all this going to cost? How much does each major task cost?

It is not clear that developing modeling to write permits is really part of the objective of setting limits for chemicals on the EPA HAPs list. Is it?

This Rule does not address the current problem of pollution in Arizona since it doesn't cover existing sources. GRANDFATHERING pollution doesn't solve pollution problems.

Nothing is said about verifying modeling results. That would require a long term test program. You could do monitoring while that is going on. The proposed modeling requires too many assumptions; such as:

- Use of 1996 monitoring data; which may or may not be accurate or relevant.
- Using minimum values of two factors: Fstk and Fvol. Is this a worst case scenario or an average of something?
- Adding background ambient levels when available. How can results be comparable with differences like this? This is not consistent and some background levels may be estimated!
- What is the accuracy of the "screen" model compared to the "refined" model?
- Some plants have "stacks"; diesel engines don't. What about cleaning operations at facilities? Those are potent chemical sources also.

Only chemicals listed by the EPA will be addressed; when will the "state" list be addressed? If there is a time delay, this will not be a useful exercise.

In considering economic impact, will the requirements of ARS 49-401 be watered down to please polluters?

Will polluters be allowed to provide arguments to allow them to use lesser controls (HAPRACT)? Will these arguments be "best guesses" like most of their other justifications?

One document is called "Procedure for air quality dispersion modeling..." Are you modeling the emission of a specific chemical at various distances from its source? What are the distances? What if pollution levels past the plant perimeter exceed the "not to exceed" levels?

According to these documents, the 1992 statutes (ARS 49-426.02, .05 and .06) allowed sources to use Risk Management Analysis to avoid use of MACT or HAPRACT controls. That makes one feel really protected! Either protect the people from pollution or stop wasting taxpayer money on extraneous exercises.

Will threshold levels or not to exceed levels be established by Weston? How much confidence can the public have in that? The EPA database is to be one of their major sources. What about using information from the National Institute of Health and other reliable and trusted health standard sources?

Clustering of plants is a pollution problem. To address each plant separately is unrealistic and does a disservice to the public.

In conclusion, it's good that now in the 21st century, someone will look at the effects of these poisons and try to set limits. With all the caveats and assumptions, I'm not sure that this is a workable solution. We believe that real time continuous monitoring must be done.

Sincerely,

Shirley L. McDonald
 Member, Health and Environment Committee
 Sun City West Property Owners and Residents Association
 13815 Camino del Sol
 Sun City West, AZ 85375

TED E. DOWNING
1700 WEST WASHINGTON, ROOM 318
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DISTRICT 28



COMMITTEES:
GOVERNMENT REFORM AND
GOVERNMENT FINANCE
ACCOUNTABILITY

JUDICIARY

UNIVERSITIES, COMMUNITY COLLEGES
AND TECHNOLOGY

Arizona House of Representatives
Phoenix, Arizona 85007
August 9, 2005

Terry Goddard
Attorney General
1275 W. Washington
Phoenix, AZ 85007

Re: Opinion request regarding A.R.S. § 49-426.06

Dear Attorney General Goddard:

Pursuant to A.R.S. § 41-193, I request a formal opinion on the following 3 separate statutory issues relating hazardous air pollutants.

The Department of Environmental Quality (DEQ) has begun rule making pursuant to A.R.S. § 49-429.06, which is the state program for control of hazardous air pollutants. Paragraph A.2 of that section references sources that produce 1 ton a year or more of a single pollutant or 2.5 tons of a combination of pollutants. This category of facilities is not yet regulated at the federal level.

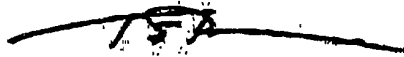
Given the above, my three concerns are:

1. A.R.S. § 49-429.06, ¶ B requires that the director perform rule making to define what constitutes a "de minimis" amount of hazardous air pollutants. Must DEQ wait until after it establishes the state program for hazardous air pollutants to complete this rule making or may DEQ include the issue in a single rule making process?
2. A.R.S. § 49-426.06, ¶ C says, "A permit or permit revision issued to a new or modified source that is subject to the state hazardous pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification . . ." The statute does not define a new source or modification. Under generally accepted rules of statutory construction, must all newly regulated sources install reasonably available hazardous air pollutant control technology?
3. A.R.S. § 49-426.06, ¶ C goes on to say, "A permit or permit revision issued to a new or modified source that is subject to the state hazardous pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects."

Paragraph D allows an owner or operator to avoid regulation by "conducting a scientifically sound risk management analysis and submitting the results to the director with the permit application for the new source or modification, the director shall exempt the source from the imposition of such technology." Given the express terms of the statute, must DEQ adopt processes and factors for risk management analysis when DEQ adopts the state hazardous air pollutant rules?

Please let me know if you would like to discuss this issue further or if you need additional information. Thank you for considering this request. I look forward to your response.

Sincerely,



Representative Ted Downing
District 28



Representative Leah Landrum Taylor
District 16



Representative Ben Miranda
District 16



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

September 15, 2005

Honorable Ted Downing
Arizona House of Representatives
District 28
1700 West Washington
Phoenix, Arizona 85007-2890

Honorable Leah Landrum Taylor
Arizona House of Representatives
District 16
1700 West Washington
Phoenix, Arizona 85007-2890

Honorable Ben Miranda
Arizona House of Representatives
District 16
1700 West Washington
Phoenix, Arizona 85007-2890

Re: Opinion Request regarding A.R.S. § 49-426.06

Dear Honorable Mr. Downing, Ms. Landrum Taylor, and Mr. Miranda:

The Attorney General received your letter of August 9, 2005, requesting a formal opinion under A.R.S. § 41-193 on three statutory issues relating to hazardous air pollutants. While your request does not strictly fall under A.R.S. § 41-193, I am responding in the hope of answering the questions posed. I've listed each of your questions along with the responses below.

1. A.R.S. § 49-426.06, paragraph B, requires that the director perform rule making to define what constitutes a "de minimis" amount of hazardous air pollutants. Must DEQ wait until after it establishes the state program for hazardous air pollutants to complete this rule making or may DEQ include the issue in a single rule making process?

The statute provides that after DEQ adopts the hazardous air pollutants program under A.R.S. § 49-426.06 (A), a person shall not commence construction or modification of a regulated source without obtaining a permit or permit revision. The statute does not require DEQ to wait until after it establishes the state program to complete the "de minimis" rule making. DEQ may include the de minimis rule making in a single process with the establishment of the hazardous air pollutants program.

The statute provides in part: "After rules adopted pursuant to subsection A of this section become effective pursuant to § 41-1032, a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision that complies with § 49-426 and subsection C or D of this section. For purposes of determining whether a change constitutes a modification, the director shall by rule establish appropriate de minimis amounts for hazardous air pollutants that are not federally listed hazardous air pollutants. In establishing de minimis amounts, the director shall consider any relevant guidelines that are criteria promulgated by the [EPA] administrator." A.R.S. § 49-426.06 (B).

2. A.R.S. § 49-426.06, paragraph C says, "A permit or permit revision issued to a new or modified source that is subject to the state hazardous [sic] pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification..." The statute does not define a new source or modification. Under generally accepted rules of statutory construction, must all newly regulated sources install reasonably available hazardous air pollutant control technology?

Arizona's air quality statutes define both of these terms.

(1) In defining a new source, the statute provides in part that "a person shall not commence the construction or modification of a source that is subject to this section without first obtaining a permit or permit revision..." A.R.S. § 49-426.06 (B). Subsection C of that section governs "a permit or permit revision issued to a new or modified source that is subject to the state hazardous air pollutant program...." A.R.S. § 49-426.06 (C).

Reading these provisions together, a new source is one that has not yet commenced construction. Commence is defined in A.R.S. § 49-401.01 (10) to mean "as applied to construction of a source: (a) for purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction and approval or permits required by federal law and this chapter and has done either of the following: (i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time. (ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time. (b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction."

Construction is defined in A.R.S. § 49-401.01 (11) as "any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions."

(2) For a "modified source," modification is defined in A.R.S. § 49-401.01 (24) as "a physical change in or change in the method of operation of a source which increases the actual emissions of any regulated air pollutants emitted by such source by more than any relevant de minimis amounts or which results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount."

3. A.R.S. § 49-426.06, paragraph C goes on to say, "A permit or permit revision issued to a new or modified source that is subject to the state hazardous [sic] pollutant program under subsection A, paragraph 2 of this section shall impose hazardous air pollutant reasonably available control technology for the new source or modification, unless the applicant demonstrates pursuant to subsection D of this section that the imposition of hazardous air pollutant reasonably available control technology is not necessary to avoid adverse effects to human health or adverse environmental effects." Paragraph D allows an owner or operator to avoid regulation by "conducting a scientifically sound risk management analysis and submitting the results to the Director with the permit application for the new source or modification, the Director shall exempt the source from the imposition of such technology." Given the express terms of the statute, must DEQ adopt processes and factors for risk management analysis when DEQ adopts the state hazardous air pollutant rules?

It is our understanding that DEQ is adopting processes for conducting and submitting a risk management analysis along with its state hazardous air pollutant rules. The rules will incorporate the statutory factors for conducting a risk management analysis set out in A.R.S. § 49-426.06 (D) as follows:

1. The estimated actual exposure of persons living in the airshed of the source.
2. Available epidemiological or other health studies.
3. Risks presented by background concentrations of hazardous air pollutants.
4. Uncertainties in risk assessment methodology or other health assessment techniques.
5. Health or environmental consequences from efforts to reduce the risk.
6. The technological and commercial availability of control methods beyond those otherwise required for the source and the cost of such methods.

I hope that this information adequately responds to your questions. If you need any additional information, please don't hesitate to let us know.

Very truly yours,

Mary O'Grady
Solicitor General

MG/JPM/ke
#285102v.2

Congress of the United States
House of Representatives
Washington, DC 20515-0307

Copy

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WWW.HOUSE.GOV/GRIJALVA

August 11, 2005

AUG 15 2005

112494

Steve Owens
Director
Arizona Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

Dear Mr. Owens:

I write to you today regarding the ongoing rulemaking process for A.R.S. 49-426.06, *State Program for Control of Hazardous Air Pollutants*. I have a number of concerns related to this rulemaking that I hope you will consider when evaluating how or if this process should continue.

The ADEQ was directed to establish a state program for the control of hazardous air pollutants under A.R.S. 49-426.06 in 1992. Since that time, ADEQ has not finalized rules setting up such a program. It now appears that the Department is attempting to fast-track the finalization of a rule to regulate hazardous air pollutants. I strongly urge the ADEQ to pursue a more deliberative and inclusive process, given the magnitude of the issues at hand.

The law as presently written appears to be deeply flawed as it does not contain mandates that, if implemented, would protect the public health. It may be more sensible at this stage for the ADEQ to return to the legislature with a set of recommendations for improving the law, rather than rushing through a rule based on an underlying statute that could use extensive updating.

One of my main concerns with the law presently on the books is that it appears to exempt all existing sources of pollutants. New sources and modifications to existing facilities will only require a risk management analysis, most likely prepared by a party hired by the company, in order to be exempt from imposing any control technology. This creates an uneven playing field for businesses around the state. While new companies coming into Arizona will be required to control their HAPs to some extent, existing businesses will not. And, the law adversely affects smaller operations because they are less likely to be able to afford the risk management analysis to gain the exemption. I would suggest that our economic growth and our ability to promote Arizona as a business-friendly atmosphere may be compromised by such uneven treatment.

In addition, the ADEQ has stated publicly that the law does not permit the agency to take cumulative impacts into account when determining how a facility will be regulated. Failure to look at the cumulative impacts to public health allows hot spots, or areas of high concentrations of pollutants near emitting facilities, to continue to exist. Given that the vast majority of facilities emitting hazardous air pollutants are located in low-income and minority communities in the

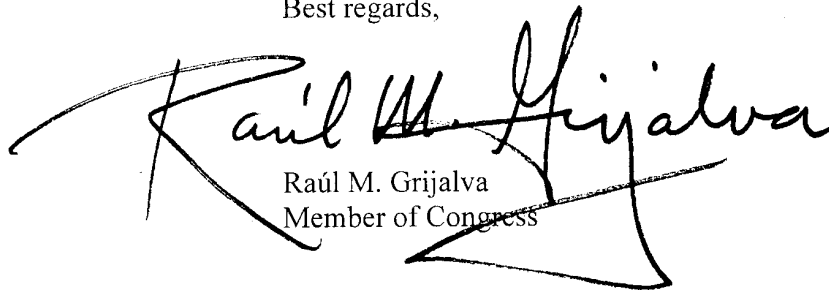
state, residents there bear a disproportionate share of the negative environmental consequences compared to the overall population. Adequate regulation would include analyzing cumulative effects of these facilities as well as slowly phasing in existing sources and regulating new sources and modifications such that the hot spot effect is reduced or eliminated.

Simply put, the current law contains so many loopholes that any regulations flowing from it would fail to adequately protect our citizens from exposure to hazardous air pollutants. Although the process may be slower than many of us would wish, the ADEQ should put forth a set of recommendations to the Arizona Legislature, requesting that legislators work to remedy the fundamental flaws in the current law.

In addition, as the ADEQ moves forward on this issue, your agency should continue to engage the affected public in the dialogue. Public hearings should be located in neighborhood centers or libraries in the communities most likely to be impacted by the regulations and should be adequately noticed. In addition, because most of the sources in Southern Arizona are located in primarily Spanish speaking communities, it is critical that Spanish language materials and translators be available at hearings.

I strongly urge you to reconsider finalizing a rule on the HAPs at this time. In the meantime, please immediately schedule public hearings on the proposal in Tucson and other affected communities. Please keep my District Director Ruben Reyes advised of any upcoming developments and hearings on this matter.

Best regards,

A large, stylized handwritten signature in black ink, reading "Raúl M. Grijalva". The signature is written over a printed name and title.

Raúl M. Grijalva
Member of Congress



Division of Public Health Services

Office of the Assistant Director

150 N. 18th Avenue, Suite 550
Phoenix, Arizona 85007
(602) 542-7333
(602) 364-0082 FAX

ADEQ
AIR QUALITY DIVISION
JANET NAPOLITANO, GOVERNOR
SUSAN GERARD, DIRECTOR
05 AUG 26 AM 11:18

August 16, 2005

Nancy Wrona, Director
Air Quality Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Dear Ms Wrona,

As the Arizona Department of Environmental Quality (ADEQ) considers the contents of a state rule for hazardous air pollutant emissions, I urge that you include a requirement for periodic measurements and reporting of the airborne levels of the substances emitted.

Specifically, I am concerned about the levels of benzene and other carcinogens emitted from fuel storage and distribution facilities, and refineries around the state. For example, I sent the enclosed letter to Maricopa County, Environmental Services Department in December 2000 when they were considering issuing an air quality permit. Maricopa responded in April 2001 saying they were considering a requirement that the entire Tank Farm be monitored. However, the existing laws were very cumbersome at the time, and it was too difficult to require this monitoring.

This lack of actual monitoring is clearly a problem for the Arizona Department of Health Services because it does not provide us with the factual information we need to respond to citizens who live near the emission facilities, and who are concerned about the quality of the air they breathe. Similarly, the lack of monitoring data puts ADEQ in an awkward position of not being able to report on the airborne concentration level of Hazardous Air Pollutants (HAPS) in the environment around the major sources of emission.

In recent years, the evidence has strengthened that benzene damages the blood forming cells of the bone marrow. Furthermore, there is additional evidence of its association with childhood cancer and leukemia, diseases that probably are initiated in the prenatal period.

I encourage ADEQ to take this opportunity to include actual monitoring and reporting of HAPS in the rules that are being drafted. Please let me know if there is more information that I can provide.

Sincerely,

Timothy J Flood, MD

Timothy J Flood, MD
Bureau Medical Director
Bureau of Public Health Statistics

Cc: Rose Conner

Enclosure

Bureau of Public Health Statistics

2700 N Third Street; Suite #4075
Phoenix, Arizona 85004-1186
(602) 542-7331 Phone
(602) 364-0082 FAX
internet: tflood@hs.state.az.us

JANE DEE HULL, GOVERNOR
CATHERINE R. EDEN, DIRECTOR

December 29, 2000

Al Brown, MPA, RS
Director, Environmental Services Department
Suite 550
1001 N Central Ave
Phoenix, AZ 85004-1935

Dear Mr Brown:

The Arizona Department of Health Services (ADHS) has several concerns about the air quality operating permit that Maricopa County proposes for Kinder Morgan, SFPP, LP (permit number V95-002, draft version dated November 22, 2000).

1. The proposed permit does not make it clear, but I believe it refers to many of the fuel storage and delivery facilities located on the southwest corner of 51st Avenue and Van Buren Street in Phoenix. For the sake of persons who are not familiar with the large scope of the operation proposed to receive the permit it would be helpful to have a one-paragraph description of the site and a map showing its location in west central Phoenix. I believe that the combined footprints of the facilities cover at least a hundred acres. For purposes of discussion, I will refer to the combined facilities as the gasoline "Tank Farm."
2. The permit fails to require ambient monitoring for hazardous air pollutants (HAPS).

The ADHS, specifically my office, conducted an extensive investigation of children's leukemia occurring in Maricopa county between 1965 and 1990. We reported the results of this study to the public in October of 1997. One of the major findings of the study was that living within 3 or 5 miles of the Tank Farm was a risk factor for childhood leukemia. [The odds ratio for leukemia at three miles was 2.2; $p=0.03$.] I recall holding a meeting at which several operators of the Tank Farm were in attendance. At that time I explained the findings of the study and requested that they obtain representative, seasonal, air quality samples at the boundary of the Tank Farm. I requested that these samples be taken in order to have scientific data with which I could reassure the public of the presumably low levels of hazardous chemicals emitted from the Tank Farm. In essence, I was asking for the emitters to monitor themselves and publically report their findings. To my knowledge this testing has never been conducted. I have never received any further communication from the Tank Farm owners or operators. They have provided me with no information that would reassure me that the measured emissions from the Tank Farm are at such low levels that they are not causing harm to the public.

~ Leadership for a Healthy Arizona ~

While the proposed permit uses a model to project the emissions from the Tank Farm, this modeling is insufficient to reassure our Department about the safety of the facility. There are many possible sources of HAPS from the facilities: storage tanks, loading racks, soil vapor extraction that cleans up past spills, solvent wipe cleaning, architectural coatings, spray coatings, tank trucks, pipes, seals on tanks and the floating roofs, burners, and other sources.

We strongly recommend that the permit require actual measurements of HAPS, specifically the volatile organic pollutants listed in item 18B (hexane; benzene; 2,2,4-trimethylpentane; toluene; xylenes; ethylbenzene; MTBE). The permit should require that these measurements be conducted in a manner that adequately represents the seasons, accounts for varying weather conditions, is comprehensive enough to reflect the variety of sources of emissions described above, is taken at representative points at the periphery of the facility, and is ongoing for the duration of the permit.

3. The modeling for the maximum annual concentrations of benzene shows levels that match the Arizona Ambient Air Quality Guideline (0.12 micrograms per cubic meter) at the fenceline, and might even exceed that amount inside the facility. The results of this modeling emphasizes the need for real, measured data as described above.
4. The Attachment #2 uses a maximum emission rate of 0.08 lb per 1,000 gallons loaded. This figure of 0.08, multiplied by the 1,663,000,000 gallons of fuel that are loaded through the facility, is used in estimating the emissions. We would find it helpful to know where the figure of 0.08 came from, and whether there are other values commonly used as the maximum emission rate.

If you have any questions about our comments we would be willing to discuss them further with you.

Sincerely,

Timothy J. Flood, MD
Medical Director

cc: Rose Conner
Norm Petersen

From: "Don't Waste Arizona, Inc" <dwaz@fastq.com>
To: Lhamo LeMoine <LeMoine.Lhamo@azdeq.gov>
Date: 9/6/2005 4:30:30 PM
Subject: Re: Invitation from Nancy Wrona to AZ HAPS Meeting

I do not see my request at the ast meeting for an opinion from the state attorney general's offic eon the agenda. Is my request being blown off? How do I make this request?

Steve Brittle
Don't Waste Arizona, Inc.

Lhamo LeMoine wrote:

> Please read the attached invitation from Nancy Wrona, Director of Air
> Quality, to the Arizona Hazardous Air Pollutants meeting. An agenda
> and revised schedule are also attached.
>
> Thank you.
>
> Lhamo LeMoine
> Arizona Department of Environmental Quality
> Air Quality Division, Planning Section
> 1110 W. Washington Street, 3415A-3
> Phoenix, AZ 85007
> 602-771-2373 phone
> 602-771-2366 fax PLEASE NOTE:
> Effective September 30, 2005, the Arizona Department of Environmental
> Quality will no longer accept e-mail addressed to the ev.state.az.us
> domain.
>
> All e-mail communications must be addressed to azdeq.gov (
> lemoine.lhamo@azdeq.gov)



ADEQ
AIR QUALITY ASSOCIATION



September 8, 2005

Nancy C. Wrona
Director, Air Quality Division
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007

RE: HAPs Rulemaking Implementation Issues

Dear Ms. Wrona:

The undersigned associations appreciate the opportunity to participate in stakeholder meetings with ADEQ on the proposed development of state hazardous air pollutants (HAPs) rules. In addition to the substantive comments that business stakeholders are expressing in the meetings, we are extremely concerned about rule implementation problems created by ADEQ's ambitious approach to roll out its proposed HAPs program in a few short months. The proposal has the potential to overwhelm the resources of ADEQ and local permitting agencies, which will harm existing businesses that wish to modify their facilities or new businesses that wish to locate in Arizona. There are no stakeholder meetings scheduled to discuss how to resolve the practical ramifications associated with the rule development.

For example, how ADEQ will make prompt and consistent hazardous air pollutant control technology (HAPRACT) determinations? How ADEQ will obtain resources to provide prompt and scientifically sound review of the complex toxicological and modeling issues presented when businesses start submitting risk management analyses to demonstrate that HAPRACT is not necessary to prevent adverse effects at their sites? Under the modeling methodology proposed by ADEQ's contractor, numerous source categories will become immediately subject to the new HAPs rule, creating a serious risk of air permit gridlock if ADEQ does not have a sound implementation strategy.

The scope of the initial rule rollout also appears to have the great potential to divert ADEQ's finite resources from other important tasks such as adopting federally mandated NSR reforms and moving forward with redesignations for numerous areas that are designated nonattainment but have been meeting ambient air quality standards for several years. Redesignating these areas would help correct the misunderstanding held by some that Arizona's air quality is deteriorating, would provide demonstrable results of the agency's many successful efforts to improve air quality, and would relieve an unnecessary burden on Arizona businesses.

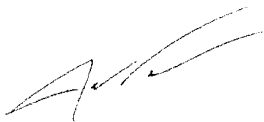
We believe full, open and meaningful discussion is necessary to develop a rule that can be implemented as a practical matter and that will result in demonstrable environmental benefits. To help facilitate this dialogue, we have attached a list of implementation questions prepared by

interested members that we request the agency to address. We request that discussions of these issues be incorporated into the stakeholder process.

We appreciate your consideration of and response to these issues that are of great importance to Arizona businesses.

Sincerely,

ARIZONA ASSOCIATION OF INDUSTRY



James Tunnell, Vice President of Policy and Operations

ARIZONA CHAMBER OF COMMERCE



James J. Apperson, CEO and President

ARIZONA ELECTRONICS ASSOCIATION



Cory Miller, Executive Director

ARIZONA MINING ASSOCIATION



Sydney Hay, Executive Director

ARIZONA ROCK PRODUCTS ASSOCIATION



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cc. S. Burr

I. RULE FOCUS AND SOURCE CATEGORY DEVELOPMENT

A. Studies and Report required by ARS § 49-426.08. Developing and publishing the initial studies and report prescribed by ARS § 49-426.08 is prerequisite to rule development.

1. Has ADEQ completed all eleven components of the study required by ARS § 49-426.08.A. (particularly A.5, A.6, A.7) and published the report of all findings as required by ARS § 49-426.08.B.?
2. Is ADEQ relying on the 1995 ENSR report to meet all of the requirements of ARS § 49-426.08?
3. Given the dramatic changes in our state over the past decade, has ADEQ updated any initial findings?
4. How has ADEQ incorporated any studies and findings, and any updates as applicable, into the current rulemaking process?
5. A previous ADEQ HAPs report identified domestic activities, such as wood stoves and swimming pools, as well as motor vehicles and lawn and garden equipment as main sources of air toxics health threats. Will such sources be subject to the rule?

B. Scope of Initial Source Category List. Under the statutory authority for the rule, ADEQ need not attempt to list all source categories subject to the rule at once. Instead, ADEQ “may by rule designate a category of sources that are subject to the state program...” ARS § 49-426.05.A.

1. Industrial sources appear to be the primary target for regulation. Why?
2. Are domestic sources and government-owned sources also being considered for listing?

C. Statutory Requirements for Listing. The statutory requirements for listing source categories are stringent ones. ADEQ must find that HAPs emissions “result in adverse effects to human health or adverse environmental effects.” In making this determination, ADEQ must consider:

1. The number of persons likely to be exposed to emissions from sources in the category.
2. Whether the category should be limited to sources with the potential to emit hazardous air pollutants in amounts exceeding the thresholds set forth in § 49-426.06.A.2.
3. Whether based on the criteria set forth in this subsection, the category should be limited to sources located in a particular geographic area.

The statutory criteria for listing a source category also states that the director shall to the maximum extent practicable define source categories so that they cover only those sources for which the finding required by this subsection has been made. ARS § 49-426.05.A.

1. How will ADEQ give due consideration to these statutory requirements?
2. How does the modeling methodology developed by Weston meet these statutory requirements?
3. When will ADEQ provide a proposed methodology for evaluating whether source categories whose SCREEN 3 results fall within the 80%-120% range will be subject to HAPRACT requirements?

D. Conservative Nature of the Modeling Methodology. As noted by numerous commenters at the August 10th meeting, the modeling methodology is quite conservative.

1. Why does the modeling rely on worst case potential impacts (and for some sources apparently ignores operating limitations and permit restrictions on potential emissions) rather than determining whether emissions actually result in adverse effects to human health or adverse environmental effects?
2. How does ADEQ's use of the process area boundary to determine acute and chronic health effects comport with statutory requirements to consider "the number of persons likely to be exposed to emissions from sources in the category" when deciding which source categories will be subject to the rule. See A.R.S. § 49-426.05.A.1.? This is of particular concern for sources that have installed fences, and/or taken other security measures to deter trespassers from accessing areas adjacent to process activities.
3. The statute requires findings based on actual circumstances, not on conservative assumptions selected to fill data gaps. If ADEQ lacks data for some chemicals or sources, it should defer decisions on those chemicals and sources until data is available, rather than developing methodologies to fill gaps with conservative assumptions in order to regulate for the sake of regulating.

E. Use of Risk Management Analysis under ARS § 49-426.06.C. In response to the concern that the modeling is too conservative, ADEQ commenters at the August 10th meeting proffered the suggestion that these sources can always seek to opt out of the state HAPs rule through the development of source-specific risk management analyses. This suggestion would appear to avoid the statutory obligations for listing source categories and shift the burden on sources to examine actual exposure and effects in order to extract themselves from regulation.

1. How is this approach consistent with the statutory requirements?
 2. Will ADEQ provide an opportunity to discuss the technical expectations for risk management analyses before a rule is promulgated?
 3. When will ADEQ provide an estimate of the number of risk management analyses expected, the time frames for review, and the agency personnel qualifications for review?
- F. Harm to Business. ADEQ's current schedule and sequence for releasing a source categories list is likely to create controversy within the public. In the public's eye, any source category on the strawman list might be deemed to cause adverse effects to its neighbors. ADEQ's planned sequence also may cause unnecessary and unreasonable concern about the value of businesses and residential real estate.
1. Why is ADEQ planning to release its strawman list of source categories, which will include the results of simplified and conservative screen modeling for individual sources, without first considering and more formally responding to stakeholders' concerns about health effects and modeling methodologies and without providing sources with the opportunity to correct the information entered into the models to ensure the models better portray their operations?

II. POTENTIAL FOR PERMITTING DELAYS

We are very concerned that the rule will create lengthy permitting delays. There is a finite amount of resources available to ADEQ and local permitting agencies. ADEQ should not promulgate a HAPs rule until it and the county permitting agencies are able to make these decisions promptly and consistently. Otherwise, it is inevitable that some economically and environmentally beneficial projects will fail to move forward due to lengthy permitting delays.

1. What steps will be taken to ensure the new rule will not create permitting delays?
2. Will ADEQ provide an assessment of the staff, expertise, guidance and resources necessary to make prompt and sound decisions on HAPRACT, risk management analyses, modeling, and HAPs modifications?
3. Will ADEQ and the local permitting agencies have the resources necessary to implement the rule at the end of the year?

III. IMPLEMENTATION UNCERTAINTY AND INCONSISTENCY

It is critical that ADEQ and the local permitting agencies implement the rule in a consistent manner to ensure a level playing field for all affected businesses.

1. What measures have been developed to ensure that requirements are consistent among jurisdictions?

IV. IDENTIFICATION OF HAPRACT AND MACT REQUIREMENTS

It is imperative that HAPRACT and MACT requirements or guidance be developed and identified for the source categories that will be subject to the rule before the rule becomes effective.

1. How will HAPRACT and MACT be determined when a source becomes subject to one of the two control requirements?
2. For federally required control technologies such as RACT and BACT, extensive guidance has been developed to guide control technology determinations. Is a central clearinghouse available that a source or the permitting authority can consult to identify what HAPRACT should be for a specific source?
3. EPA has a long history of engaging the affected industries and local permitting agencies in developing RACT and also control techniques guidelines before promulgating rules so that uniform and effective controls can be designed and implemented for all affected sources. Will ADEQ adopt a similar approach here?
4. Will HAPRACT apply to individual HAPs or combined HAPs?

V. MODIFICATIONS

Currently there are no meetings scheduled to discuss modifications, yet there are a number of questions that must be addressed before rule implementation.

1. How will modifications be defined?
2. Will ADEQ adopt a rule that relies on the approach used in the federal New Source Review program or the outdated NSR approach?
3. While HAPRACT can only be applied to equipment that is subject of the modification, how will ADEQ and local permitting agencies make that determination?

VI. STRAWMAN RULEMAKING PROCESS

Additional time is needed to work through each concern about ADEQ's methodologies in a structured, unrushed process. The current schedule is unrealistic. For example, the two weeks provided in September for responding to ADEQ's yet-unreleased list of source categories is insufficient to enable stakeholders to review the list, check the data relied upon by ADEQ, and submit information to ADEQ in time to provide meaningful input.

1. How can stakeholders engage ADEQ in meaningful discussions about stakeholder concerns?
2. What mechanisms can be adopted to ensure thorough responses to all questions and concerns raised, in addition to the impromptu responses offered at stakeholder meetings?
3. How will ADEQ modify its methodologies in response to stakeholder comments already submitted?
4. Will ADEQ consider a more realistic time frame that will provide the opportunity for meaningful public input that is necessary to develop consensus and an effective rule?

-----Original Message-----

> From: Don't Waste Arizona, Inc [mailto:dwaz@fastq.com]

> Sent: Wednesday, September 28, 2005 12:54 PM

> To: tgunn@gciaz.com

> Subject: cc

Attachment:

COMMENTS RE SIC CODES AND HAPS RULES

Having now had an opportunity to review the handouts and review EPA TRI data, I must point out a number of issues.

Re: L&M LAMINATES & MARBLE, 813 E UNIVERSITY, PHOENIX AZ 85034
This facility is listed on the TRI database as having an SIC code of 3083 (LAMINATED PLASTICS PLATE, SHEET, AND PROFILE SHAPES). Not sure where SIC of 9999 came from as per the handout, but L&M is not an appropriate facility for this SIC code. It's styrene emissions reported for calendar year 2003 were 56,806 pounds. The modeling was conducted using 2002 TRI data, which showed only 46,226 pounds. The facility's styrene emissions have varied greatly through the years. In 1998, TRI data showed 70,513 pounds of styrene emissions. Modeling an average of the various year's HAPs emissions would have been more appropriate than just picking one year, but it looks more and more that using PTE would be more appropriate, with no controls in place. At any rate, this brings forth the issue about whether using emissions for any facility being reviewed for a particular calendar year (2002) is appropriate or not. I would say not. There are other examples that will follow:

- 1) ISOLA USA CORP (SIC 3679) was modeled for **9120** pounds of N,N-DIMETHYLFORMAMIDE emissions in 2002, **but 2003 emissions were 35,519 pounds.**
- 2) U.S. AIR FORCE PLANT NO. 44 (SIC 3724) dramatically reduced MEK emissions in 2003. In 2002, MEK emissions were 6,960 pounds.
- 3) Lear Jet, Inc. (SIC code 3721) was modeled for 11,321 pounds of MEK and 19,049 pounds of Toluene emissions using 2002 TRI data. But in 2003, the facility reported 34,689.74 pounds of ethylbenzene emitted into the air; toluene emissions in 2003 were 20,888 pounds; MEK emissions in 2003 were 10,227 pounds. Total facility HAPs emissions in 2002 were 30,370, but in 2003, the total facility HAPs emissions were 65,804.74 pounds. **This also raises again the issue of synergistic and cumulative effects.**

Clearly, the methodology used for determining the emissions from representatives of industries in various SIC codes is unscientific and not really representative of the HAPs pollution emitted by facilities. There will be fluctuations in HAPs emissions due to business cycles.

Also, there was no consideration of whether there were control devices in use that effectively limited emissions.